

Govt's Exhibit No. 2, Selective Service Questionnaire

had read to and the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by me in the foregoing are in my own handwriting.

Registrant signs here Walter

(Signature or mark of registrant)

Subscribed and sworn to before me this 23 day of Aug 1941

John S. Wilson
(Signature of officer)

LOCAL BOARD NO. 11
WENTZ AND COUNTY
1ST & Second Sts.
WENTZ HENTON, MOBILE

20
120
911

If another person has assisted the registrant in filling out this Questionnaire, each person shall sign the following statement:
I have assisted the registrant herein named in preparation of this Questionnaire because

(For example: Registrant unable to read and write English, etc.)

INSTRUCTIONS - Registrant shall write nothing below this line when filling out the Questionnaire

MINUTE OF ACTION ON REQUEST FOR EXTENSION OF TIME FOR FILING CLAIM OR PROOF

The application of _____ to have time for filing claim or proof extended to _____ is (granted) (refused) for the reason that _____

MINUTE OF ACTION BY LOCAL BOARD
The Local Board classifies the registrant in Class 1 Subdivision _____ by the following vote: Yes 3 No 0

APPEAL TO BOARD OF APPEAL
I hereby appeal to the Board of Appeal from the determination of the Local Board.

MINUTE OF ACTION BY BOARD OF APPEAL
The Board of Appeal classifies the registrant in Class 1 Subdivision A by the following vote: Yes 4 No 0
subject to question of conscientious objection - referred to Department of Justice this day.

APPEAL TO PRESIDENT
I hereby appeal to the President from the determination of the Board of Appeal.

MINUTES OF OTHER ACTIONS
1-19-42 Classified in Class 1-A as per Form 200.
The Board of Appeal classifies the registrant in Class II Subdivision E by the following vote: Yes 4 No 0
June 17 1942

7-15-43 Reclassified in Class 4-B as per classification recommendation of the Appeal Board.

1-5-43 Reclassified in Class 4-F.

Government's Exhibit No. 3, Order to Report

Local Board No. 11 32
 Westmoreland County 129
 [redacted] 011
 107 South Second Street
 West Newton, Pa.

(Prepare Six Copies)

Ly [redacted] #3
 10/10/44
 JET

August 21, 1944
 (Date)

ORDER TO REPORT FOR WORK OF NATIONAL IMPORTANCE

THE PRESIDENT OF THE UNITED STATES.

TO [redacted] (Name)
 (Last Name)

Home address 227 Hill St., North Belle Vernon, Pennsylvania.

Order No. 222

CAPTION:

Having submitted yourself to a Local Board composed of your neighbors and having been classified under the provision of the Selective Training and Service Act of 1940 as a conscientious objector to both combatant and noncombatant military service (Class IV-E), you have been assigned to work of national importance under civilian direction. You have been assigned to the Civilian Public Service Camp #44, located at Big Flats, Chautauque County in the State of New York.

The Selective Service System will furnish you transportation to the camp, provided you first go to your Local Board named above and obtain the proper instructions and papers.

You will, therefore, report to the Local Board named above at 4 P.M. on the 2nd day of September, 1944.

You will be examined at the camp for communicable diseases and you will then be instructed as to your duties.

Willful failure to report promptly to this Local Board at the hour and on the day named in this notice is a violation of the Selective Training and Service Act of 1940 and may subject you to a fine and imprisonment.

You must keep this form and take it with you when you report to your Local Board.

James White
 Member of Local Board

Government's Exhibit No. 3, Order to Report

LOCAL BOARD INSTRUCTIONS

One copy of this form to be mailed by the Local Board to the assigned man when Local Board receives the *Assignment to Work of National Importance* (D. S. S. Form 49) from State Headquarters. Five copies to be mailed to the Camp Director when the man is entrained to camp.

INSTRUCTIONS FOR CAMP DIRECTOR

The Camp Director will fill the lines below; will then mail four copies to National Headquarters, Selective Service System, 21st and C Streets NW., Washington, D. C.; and retain one copy for camp file.

The registrant reported on the day of, 194.....

(Name and address of camp)

Camp Director

If the man does not report within 48 hours after date of assignment to camp, Camp Director must notify National Headquarters by air mail.

Deft's Ex. "A", Notice of Delinquency

Deft's Ex. "A"
12/1/42
JH

NOTICE (TO REGISTRANT) OF SUSPECTED DELINQUENCY

Local Board No. 11	11
Westmoreland County	129
	011
107 South Second Street	
West Newton, Pa.	

To First (First) Second (Middle) Third (Last)

DEAR SIR:

According to information in possession of this Local Board, you have failed to perform the duty, or duties, imposed upon you under the selective service law as specified below.

☐ To present yourself for, and submit to, registration.

☒ To present himself for work of National Importance.

(Specify others)

You are therefore directed to report, by mail, telegraph, or in person, at your own expense, to this Local Board, on or before 5 P. m., on the 8th day of September, 1942.

Failure to report on or before the day and hour specified is an offense punishable by fine or imprisonment, or both.

J. J. White
 Member of Local Board.

This form shall be made out in triplicate. The original shall be sent to the suspected delinquent, the duplicate shall be sent to the Governor, and the triplicate shall be filed. (Selective Service Regulations, Volume Three, Classification and Selection.)

9-7-42

Deft's Ex. "B", Reply to Notice of Delinquency

"THIS ONE THING I DO"

• ADVERTISE •

THE THEOCRACY

Local Board #11
107 S. Second St.
West Newton, Pa.

Deft's Ex. "B"
12/1/42
H.T.

Nick Falbo
327 Hill Street
Belle Vernon, Pa.
September 8, 1942

To Whom it may concern,

Your notice of suspected delinquency states that I am directed to report, by mail, telegraph, or in person, at my own expense, to this Local Board, on or before 5 P.M. on the 8th day Sept. 1942.

This letter constitutes my means of reporting to the above Local Board. I request the Board to reconsider my case and all of my documents which have been directly or indirectly forwarded to the Board because the Board has erred in classifying me in IV-E. If the Board would have considered my case without discrimination they would have come to the true conclusion and classified me in IV-D.

I am a Minister of Almighty God and can not accept any other classification other than IV-D.

Nick Falbo

P.S. You are responsible to the Almighty God and in due time He will deal with you accordingly.

Deft's Ex. "C", Conscientious Objector's Form

SPECIAL FORM FOR CONSCIENTIOUS OBJECTOR

Order No. 2510

LOCAL BOARD NO. 11	
WESTMORELAND COUNTY	32
107 S. Second Street	129
WES T HUNTDALE, Pa. 15086	911

Name Nick (First) (None) (Middle) Falbo (Last)
 Address 327 Hill St. (Number and street or R. F. D. route)
Bella Vernon (City, town, or village) Westm'd (County) Pa. (State)

This form must be returned on or before

Aug. 30, 1961

(Five days after date of mailing or issue)

INSTRUCTIONS

A registrant who claims to be a conscientious objector shall offer information in substantiation of his claim on this special form, which when filed shall become a part of his Questionnaire.

The questions in Series II through V in this form are intended to obtain evidence of the genuineness of the claim made in Series I, and the answers given by the registrant shall be for the information only of the officials duly authorized under the regulations to examine them.

In the case of any registrant who claims to be a conscientious objector, the Local Board shall proceed in the ordinary course to classify him upon all other grounds of deferment, and shall consider and pass upon his claim as a conscientious objector only if, but for such claim, he would have been placed in Class I. The procedure for appeal from a decision of the Local Board on a claim for conscientious objection is provided for in the Selective Service Regulations. Failure by the registrant to file this special form on or before the date indicated above may be regarded as a waiver by the registrant of his claim as a conscientious objector. Provided, however, That the Local Board, in its discretion, and for good cause shown by the registrant, may grant a reasonable extension of time for filing this special form.

Series I.—CLAIM FOR EXEMPTION

INSTRUCTIONS.—The registrant must sign his name to either Statement A or Statement B in this series but not to both of them. The registrant should strike out the statement in this series which he does not sign.

A. I claim the exemption provided by the Selective Training and Service Act of 1940 for conscientious objectors, because I am conscientiously opposed by reason of my religious training and belief to participation in war. I am not willing to participate in any service or training therefor under the direction of military authorities.

B. I claim the exemption provided by the Selective Training and Service Act of 1940 for conscientious objectors, because I am conscientiously opposed by reason of my religious training and belief to participation in war in any form and to participation in any service which is under the direction of military authorities.

(Signature of registrant)

Nick Falbo
 (Signature of registrant)

Series II.—RELIGIOUS TRAINING AND BELIEFS

INSTRUCTIONS.—Every question in this series is to be fully answered. If more space is necessary, attach extra sheets of paper to this page.

1. Describe the nature of your belief which is the basis of your claim made in Series I above.

Please refer to my Statement, Conscientious and
Neutrality booklet.

2. Explain how, when, and from whom or from what source you received the training and acquired the belief which is the basis of your claim made in Series I above.

By studying the Bible and the Watchtower publications, such as the
Watchtower magazine, Consolation magazine, the book "Religion," "Salvation,"
"Riches," "Education," etc., and by attending Bible studies. In the year of
7/1/1930 through the Watchtower Bible & Tract Society.

Deft's Ex. "C", Conscientious Objector's Form

2. Give the name and present address of the individual upon whom you rely most for religious guidance.

The Holston Bible & Tract Society
117 Adams Street, Brooklyn, N. Y.

4. Under what circumstances, if any, do you believe in the use of force?

In my own personal defense.

3. Describe the actions and behavior in your life which in your opinion most conspicuously demonstrate the consistency and depth of your religious convictions.

*I have been arrested and served imprisonment in the county
 Jail, Greenburg Pa., and in other places because of my
 faith and because of exercising my right to worship. I do not
 take dictation of my own conscience.*

4. Have you ever given public expression, written or oral, to the views herein expressed as the basis for your claim made in Series I above? If so, specify when and where.

No

Series III—GENERAL BACKGROUND

INSTRUCTIONS.—Every question in this section must be fully answered. If more space is necessary, attach extra sheets of paper to this form.

1. Give the name and address of each school and college which you have attended, together with the dates of your attendance; and state in each instance the type of school (public, private, church, military, commercial, etc.).

Name of School	Type of School	Location of School	Dates Attended	
			From	To
<i>Baggaley School</i>	<i>Public</i>	<i>Baggaley, Pa.</i>	<i>1921</i>	<i>1925</i>
<i>H. B. Turner School</i>	<i>Public</i>	<i>Greenburg Pa.</i>	<i>1925</i>	<i>1929</i>
		<i>H. B. Turner, Pa.</i>	<i>19</i>	<i>19</i>

2. Give a chronological list of all occupations, positions, jobs, or types of work, other than as a student in school or college, in which you have at any time been engaged, whether for monetary compensation or not, giving the facts indicated below with regard to each position or job held, or type of work in which engaged:

Type of Work	Name of Employer	Address of Employer	Period Worked	
			From	To
<i>Clayton Johnson</i>	<i>Harry Wolf</i>	<i>W. H. H. Co., Greenburg Pa.</i>	<i>1925</i>	<i>1929</i>
			<i>19</i>	<i>19</i>
			<i>19</i>	<i>19</i>
			<i>19</i>	<i>19</i>
			<i>19</i>	<i>19</i>
			<i>19</i>	<i>19</i>

Deft's Ex. "C", Conscientious Objector's Form

3. Give all addresses and dates of residence where you have formerly lived:

Name of City, Town, or Village	State or Foreign Country	Street Address or R. F. D. Route	Dates of Residence	
			From	To
Baggaley	Pa.	House # 99	1915	1918
			19	19
			19	19
			19	19
			19	19
			19	19

4. Give the name, address, and country of birth of your parents and indicate whether they are living or not.

Mr. Ralph Falter, Mrs. Rosamaria Falter, born at Erie Pa., and both are living.

PART IV—PARTICIPATION IN ORGANIZATIONS

INSTRUCTIONS—Questions 1, 2, and 3 in this series must be fully answered. If more space is necessary, attach extra sheets of paper to this page.

1. Have you ever been a member of any military organization or establishment? If so, state the name and address of same and give reasons why you became a member.

No

2. Are you a member of a religious sect or organization? Yes If your answer to question 2 is yes, answer questions (a) through (e).

(a) State the name of the sect, and the name and location of its governing body or head if known to you:

(Jehovah's Witnesses) Watchtower Bible and Tract Society
117 Adams St. Brooklyn, N.Y.

(b) When, where, and how did you become a member of said sect or organization?

I became a member in 7/1/1931. In Monessen, Pa. by consecration, and by reading the Watchtower Publications.

(c) State the name and location of the church, congregation, or meeting where you customarily attend:

"Kingdom Hall" 220 Donner Ave. Monessen, Pa.

(d) Give the name and present address of the pastor or leader of such church, congregation, or meeting:

Angelo Galuppo, 411 Postville Ave. Monessen, Pa.

(e) Describe carefully the creed or official statements of said religious sect or organization in relation to participation in war:

Please refer to Consecration and Neutrality booklet.

3. Describe your relationships with and activities in all organizations with which you are or have been affiliated, other than religious or military:

None

Deft's Ex. "C", Conscientious Objector's Form

Series V—REFERENCE

Give here the name and other information indicated concerning persons who could supply information as to the sincerity of your professed convictions against participation in war:

Name	Full Address	Occupation or Position	Relationship to You
Carl V. Singer	577 Broadview Ave. East Liverpool, Ohio	Zone Sergeant	None
Angelo Galuppo	411 Westmore Ave. Warren & Company Detroit		

REGISTRANT'S AFFIDAVIT

INSTRUCTIONS.—The data made on this form will not be considered unless it is supported by the following affidavit. (If the registrant cannot read, the contents and his answers therein shall be read to him by the officer who administers the oath.)

STATE OF _____, COUNTY OF _____

I, _____, do solemnly swear (or affirm) that I am the registrant described in the foregoing questions and answers, that I know the contents of my said answers, and that each and every statement of fact in my answers to said questions is true, to the best of my knowledge and belief.

(Registrant sign here)

Nick Galbo

(Signature or mark of registrant)

Subscribed and sworn to (or affirmed) before me this _____ day of _____, 19____

(Signature of officer administering oath)

(Designation of officer)

If the registrant has received assistance from an advisor, the advisor shall sign the following statement:

I have assisted the registrant herein named in the preparation of this form

(Signature of advisor)

(Address of advisor)

Deft's Ex. "C", Authorization Certificate

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY THAT Nick Falbo whose signature appears below, is an ordained minister of Jehovah God to preach the gospel of God's kingdom under Christ Jesus and is therefore one of Jehovah's witnesses; that he is sent forth by this Society, which is created and organized and chartered by law to preach the gospel of God's kingdom, and that Jehovah's witnesses are commanded to obey God by preaching the gospel, which commandments appear in the Bible at Isaiah 61:1,2; Isaiah 43:9-12; Matthew 10:7,12; Matthew 24:14; Acts 20:20; 1 Peter 2:21; and 1 Corinthians 9:16; and that Jehovah's witnesses are compelled to obey God rather than men. (Acts 3:23; Acts 4:19; and Acts 5:29)

THAT in obedience to God's commandments Jehovah's witnesses preach the gospel and worship Almighty God by calling upon the people at their homes and exhibiting to them the message of said gospel in printed form, such as the Bible, books, booklets and magazines, and thus afford the people the opportunity of learning of God's gracious provision for them.

THAT said witness of Jehovah is doing this work of bearing testimony before the people in strict accord with the fundamental law of the land and in obedience to God's law, which is supreme. Any kindness and consideration shown this witness of Jehovah will be greatly appreciated and is certain to call forth the blessing of the Lord upon the one showing such kindness. (Matthew 25:31-46)

WATCH TOWER BIBLE & TRACT SOCIETY

J. Rutherford President.

Name

Nick Falbo

Address

337 Hill St.
Belle Vernon, Pa.

Deft's Ex. "C", Reverse Side Authorization Certif'e

In these days of world distress all people need sound advice to guide them in the right way. Bible prophecies furnish that needed advice and The Watchtower publishes it for the benefit of the people.

Information concerning the importance of Christian instruction is set out fully in the book called Religion, and the distinction between religion and Christianity is there made plain. To read it means to get a great fund of useful information.

A special offer is being made during the next 30 days: A year's subscription for The Watchtower, meaning 24 issues, and the book Religion, on a \$1.00 contribution.

Defendant's Exhibit "C", "My Statement."

" MY STATEMENT "

#1

I ask the Draft Board to please read and consider "My Statement" in order that my stand be understood.

My occupation is, by God's Grace, solely that of an Ordained Minister of Almighty God, preaching the Gospel of His Kingdom and I am a true and sincere follower of Christ Jesus the son of Jehovah God.

I have been one of Jehovah's Witnesses for (11) years and have actively engaged in preaching the Gospel of God's Kingdom from house to house and from city to city.

I am recognized by the Watchtower Bible and Tract Society as a full time publisher known as a "PIONEER". If you will notice in Consolation #569 which I have handed in with my questionnaire, a list of full time publishers is given by the Society. The reason my name does not appear or is not listed in the said Consolation is for the reason that I had my name temporarily removed because of sickness but it has been re-entered since, and I have resumed in the PIONEER service.

My purpose and commission is to give testimony before the people of the world that Jehovah is the Almighty God and that His purpose is to set up in full operation "THE THEOCRACY", which shall rule the world in righteousness and bless the persons who are obedient to that Theocratic rule with life everlasting, peace, and happiness.

The Theocracy is the government of Jehovah God by and under the immediate direction of Christ Jesus the King. Being one of Jehovah's witnesses my commission and purpose is therefore to proclaim and transmit this vital information to all persons who will hear the testimony from God's word the Bible.

I have no power nor desire to compel anyone to hear or to join anything. I am merely a witness transmitting the message of Almighty God. All sincere persons devoted to Jehovah, who are in a covenant to do His will and who have been accepted by Him as such servants are ordained ministers of Almighty God; and since God ordains me, that is the highest ordination or authority that man could have, and such ordination is contained in the following specific rule of the Most High, as set forth in the Bible as to wit.

The spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek; He hath sent me to bind up the brokenhearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn. (Isaiah 61: 1,2)

The Theocracy is the kingdom of Jehovah God, and this fact is stressed repeatedly in the testimony of Christ Jesus who is the Anointed King. At the time of His earthly ministry He said:

"The kingdom of heaven is at hand", meaning that Jesus himself, being appointed and anointed King by Jehovah, was then present.

His testimony, given over a period of more than three years, repeatedly emphasized the Kingdom of God as that which is of greatest importance to man because it is the means of man's salvation to life and the means of the vindication of Jehovah's great name.

Jesus continuously commanded all of His followers to pray for the coming of God's Kingdom, which will vindicate God's name and bless all obedient ones of men, and therefore He said: After this manner therefore pray ye: Our Father which art in heaven, Hallowed be thy name, Thy Kingdom come. Thy will be done in earth as it is done in heaven. etc. (Matthew 6:9,10)

(Continued on 2nd. sheet)

Back to 68 -11-

Defendant's Exhibit "C", "My Statement"

"MY STATEMENT"

#2

Should I as one of Jehovah's witnesses participate in wars between the nations of the world? How could one who is wholly devoted to ALMIGHTY GOD, and to His Kingdom under Christ Jesus, take sides in a war between nations, both of which are against God and His Kingdom? The answer is no, and the follow is given in support thereof.

Concerning such witnesses of the most High God it is written in the Bible: But ye are a chosen generation, a royal priesthood, an holy nation, a peculiar people; that ye should shew forth the praises of him who hath called you out of darkness into the marvellous light. (1 Peter 2:9)

No government of the earth is in favor of Jehovah's Kingdom under Christ, but all are against it. No government is advocating the establishment of God's kingdom of righteousness, and hence all are against that kingdom as Jesus declares; He that is not with me is against me. (Matthew 12:30) Also as recorded in (1 John 5: 19) "The whole world lies under the evil one."

It is the will of Almighty God Jehovah, and of His King Christ Jesus, that I shall not engage in war between the nations of the earth and that I am forbidden to so engage therein, the following is cited from the scriptures and which is addressed specifically to those consecrated persons who follow in the footsteps of Christ Jesus, to wit:

For though we walk in the flesh, we do not war after the flesh; for the weapons of our warfare are not carnal, but mighty through God to the pulling down of strong holds. (2Corinthians 10:3,4)

These commandments are given to all conscientious, faithful servants of Jehovah God: Keep yourselves unspotted from the world. (James 1:27) They are not of the world, even as I am not of the world. Sanctify them through thy truths: thy word is truth. (John 17:16,17) It is further stated in (John 15: 17-19) as follows:

I command you that ye love one another. If the world hateth you, ye know that it hated me before it hated you. If ye were of the world, the world would love his own; but because ye are not of the world, therefore the world hateth you.

I love not the world, neither the things that are in the world. If any man love the world, the love of the Father is not in him. (1John 2:15)

In order for one to prove his love for God and His Kingdom he must be a witness to Jehovah's name and His Kingdom in this day of great crisis in the world, as written:

Herein is our love made perfect, that we may have boldness in the day of judgment; because as he is, so are we in this world. There is no fear in love; but perfect love casteth out fear; because fear hath torment. He that feareth is not made perfect in love. (1John 4: 17, 18)

When Christ Jesus was on the earth he was entirely neutral toward all nations. He did not instruct his followers to take sides with any government or any nations of the earth in their controversies, but he emphatically instructed all his true followers to devote themselves entirely to God's Kingdom, Theocracy.

The footstep followers of Christ Jesus are designated in the Bible as "soldiers of Christ, and I being a servant of the most High God Jehovah, I am also considered, from the Bible standpoint, a soldier of Jesus Christ. It is recorded in (2 Timothy 2:3) as follows: Thou therefore endure hardness, as a good soldier of Jesus Christ. One who is a follower of Christ Jesus, and who believes that Jehovah is the Almighty God and that His Kingdom under Christ is the only hope of suffering humanity, and who believes that the Bible is the true word of God, should not and must not deviate from the Bible teaching to receive the blessing of Almighty God.

I therefore wish that the Board will carefully consider my stand and I ask for classification (4-A) for complete exemption.

Rich. Walter

Defendant's Exhibit "D", Certificate of Ordination

1st of Printing
Administration
324 COLUMBIA HEIGHTS
Publishing
317 ADAMS STREET



PHONE
TRIANGLE 3-1424
CABLE
WATCHTOWER
BROOKLYN

Def't's Ex. "D"
12/1/42
J.T.

SD-88

Oct. 7, 1941

TO WHOM IT MAY CONCERN.

This is to certify that Nick Falbo has been associated with the Watchtower Bible & Tract Society, Inc., according to our records, since 1931.

He was baptized in 1935 and was appointed direct representative of this organization to perform missionary and evangelistic service in organizing and establishing churches and generally preaching the Gospel of the Kingdom of God in definitely assigned territory in 1941.

Mr. Falbo's entire time is devoted to missionary work. He has declared himself to be a follower of Christ Jesus and wholly consecrated to do the will of Almighty God. He has taken a course of study in the Bible and Bible helps prescribed by this Society and has shown himself apt to preach and teach "this Gospel of the Kingdom". Matthew 24:14.

He has the Scriptural ordination to preach "this Gospel of the Kingdom". Isaiah 61:1,2; Isaiah 52:7. He is, therefore, declared by this Society a duly ordained minister of the Gospel and is authorized to represent the Society and preach "this Gospel of the Kingdom", proclaiming the name of Jehovah God and Christ Jesus his King.

William L. R. [Signature]
W. L. R.
Vice-President

J. P. Sullivan
Superintendent of Evangelists

Subscribed and sworn to before me
this 7th day of October 1941.

[Signature]
Notary Public
New York City

Defendant's Exhibit "E", Letter of Appellant

Deft's Ex. "E"
12/1/42
JS

Nick Falbo
 327 Hill St.
 Belle Vernon, Pa.

To whom it may concern;

Please use no prejudice against me because of my faith and because I have chosen to serve Jehovah God.

I, Nick Falbo, have been one of Jehovah's Witnesses for about 12 years.

In July of 1940 I attended a convention of Jehovah's Witnesses at Detroit Mich. After returning home from the convention I enrolled as a PIONEER with the Watchtower Bible and Tract Society of Brooklyn N.Y. I continued in such work as a PIONEER from Sept. 1940 till the latter part of Jan. 1941. In the latter part of Jan. I became ill with Influenza and Liver trouble and remained ill till July of the same year. In August I regained some of my health and in that month I resumed my work as a PIONEER.

If you will note that the Consolation containing the list of ministers reporting to the above Society, was published in July 1941 during the time that I was ill, and for that reason my name did not appear in the said list. Since I have resumed my work my name has been added to the "Certified list of Pioneers" and forwarded to the Selective Service Headquarters.

During my illness I was treated by Dr. Gemmill of Belle Vernon, Pa. and by Dr. H.W. Daggs of 6916 Superior Ave., Cleveland, Ohio.

Because of my satisfactory work as a Minister I have since April 1st. been appointed by the Watchtower Society as a SPECIAL PIONEER. From the time I have been a Pioneer I have devoted at least 150 hours each month preaching from house to house as commanded for me to do in ACTS 20:20, and Matthew 24: 14. As a SPECIAL PIONEER I am devoting at least 175 hours in such work and also to conduct funerals and to give or make sermons at such cases. I am also the Study Conductor for the class of Christians gathering at Dodora, Pa.

I have received my ordination from Almighty God to be a Minister and also from the Watchtower Bible and Tract Society. I must continue to be a minister for God because I am a soldier for Jesus Christ as stated in 2 Timothy 2: 3,4. I have covenanted myself to God to do such ministerial work and must not permit anything to deviate me from such contract with Almighty God. Being that I am a soldier of Jesus Christ my weapons are not carnal but mighty through God to the pulling down of strong holds as recorded in 2 Corinthians 10:3,4.

The reason I have chosen to be a servant of Almighty God and a PIONEER is because I want to live a true Christian life as Christ Jesus did and his faithful followers, and because I want to devote my entire time in giving praise to the most high God as commanded in the Bible for all Christians to do.

I hope you have carefully considered my stand and place in class 4-D as a Minister of God.

Exhibit 1 new document
Manning Office

Nick Falbo

Defendant's Exhibit "F", Affidavit of John A. Poloney

Deft's Ex. "F"
12/2/42
147

Affidavit of John A. Poloney

City of Brownsville

County of Fayette

State of Pennsylvania

I, John A. Poloney, have known Nick Falto to be one of Jehovah's Witnesses for about five years. He has been a special representative of the Watchtower Bible and Tract Society, Inc. known as a pioneer since September 1, 1940. I know this because at that time I also was a pioneer and we worked together. He became ill in January of 1941, and being unable to continue he withdrew from that work temporarily. After he recovered from his illness he resumed his work as a pioneer and he is still in that work.

I also know him to be of excellent character.

John A. Poloney

Ssd)

Subscribed to and sworn before me
this 15 day of Dec, 1942

James J. Walsh

NOTARY PUBLIC
MY COMMISSION EXPIRES
MARCH 16 1943

Exhibit 2
M. W. Ochs
Hearing Officer

Defendant's Exhibit "G", List of Signators

Deft's Exhibit "G"
12/1/42 HT

Jehovah's Witnesses
320 Donner Ave.
Monessen, Pa.

We the undersigned do hereby acknowledge that
Nick Falbo, of 327 Hill St., Belle Vernon, Pa. has been
a Pioneer for the Watchtower Bible and Tract Society
since September, 1940.

<u>A. E. Sargent</u>	<u>215 Lockhart Ave. Charleston</u>
<u>Stephanie Saluppo</u>	<u>411 Rostrom St. Monaca Pa.</u>
<u>Mrs. Mary J. Saluppo</u>	<u>1106 - 2nd St. Monaca, Pa.</u>
<u>Samuel L. Crook</u>	<u>356 Cook St. Fayette, Pa.</u>
<u>Kathryn Warholie</u>	<u>443 Third St. Monaca, Pa.</u>
<u>Gerardine Franchi</u>	<u>119 Luella Ave. Charlestown</u>
<u>Anna Marie Sargent</u>	<u>315 Lockhart Ave. Charlestown, Pa.</u>
<u>Mrs. Elizabeth Sargent</u>	<u>210 Lockhart Ave. Charlestown, Pa.</u>
<u>Josephine Sargent</u>	<u>65 Allen St. Monaca, Pa.</u>
<u>Martha Sargent</u>	<u>745 Washington Ave. Monaca, Pa.</u>
<u>Charles Sargent</u>	<u>322 6th St. Monaca, Pa.</u>
<u>Mary Sargent</u>	<u>65 Allen St. Monaca, Pa.</u>
<u>Angela Saluppo</u>	<u>411 Rostrom St. Monaca, Pa.</u>
<u>Kathryn Sargent</u>	<u>456 - 3rd St. Monaca, Pa.</u>
<u>Peter Sargent</u>	<u>456 - 3rd St. Monaca, Pa.</u>
<u>Mary Sargent</u>	<u>410 Highland Ave.</u>
<u>Nick Falbo</u>	<u>327 Hill St. Belle Vernon, Pa.</u>
<u>Anna Nickland</u>	<u>Monaca, Pa.</u>
<u>Helen Budnik</u>	<u>513 Third St. Monaca, Pa. - S.B.</u>
<u>Charles Zitho</u>	<u>968 Grant Ave. Monaca, Pa.</u>

which 3
members
living off

Defendant's Exhibit "G", Affidavit of Galuppo

State of Pennsylvania,
County of Westmoreland, SS:

Personally appeared before me, a notary public, in and for said County and State, Angelo Galuppo, who being duly sworn according to law, doth depose and say; that he signed the within petition, and the same is true and correct as he believes.

Angelo Galuppo

Subscribed and sworn to before me this
18th day of May, 1942.

Marion L. Reamer
MARION L. REAMER, Notary Public
MY COMMISSION EXPIRES
FEBRUARY 20, 1945

Defendant's Exhibit "H", Statement of De Fazio

Deficit "H"
12/1/42 RT

Affidavit

Anthony De Fazio
 336 Broad Ave.
 Belle Vernon, Pa.

To whom it may concern:

I, Anthony De Fazio do hereby wish to testify that I have known Nick Falbo for about thirteen years. I have always known him to be a respectable and law abiding citizen. As one of Jehovah's Witnesses he has always been very much engrossed in his work of preaching the gospel and has never taken part in any worldly pleasures.

I know that for the past two years he has been a PIONEER for the Watchtower Bible and Tract Society of Brooklyn, N.Y.

I also want to add that I am not one of Jehovah's Witnesses.

Signed *Anthony De Fazio*

Sworn to and subscribed to before me, this day of May, 1942.

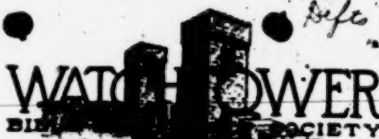
[Signature]
 Notary Public

NOTARY PUBLIC
 101 Chestnut Street
 Phila. 14, PA.

Exhibit 4
M. W. DeFazio
Notary Public

Defendant's Exhibit "I", Letter of Watchtower Society

OFFICES:
Administration
124 COLUMBIA HEIGHTS
Publishing
117 ADAMS STREET



PUBLISHING 117 ADAMS STREET BROOKLYN, N.Y.
May 21, 1942

PHONE
TRIANGLE 3-1424
CABLE
WATCHTOWER
BROOKLYN

Mr. E. W. Acheson,
United States Attorney,
1927 Oliver Building,
Pittsburgh, Pa.

Dear Sir:

Mr. Wick Falbo, 327 Hill Street, Belle Vernon, Pennsylvania, advises us that you requested of him to have us furnish you certain information concerning his standing with this Society.

Mr. Falbo has been associated with this Society, according to our records, since the year 1931 and became a full-time pioneer and direct representative in carrying on the work of preaching the gospel on September 1, 1940 and on his writing us in January 1941 that his health prevented his serving full time for a while, his name was removed from the full time list on January 29, 1941. On application subsequently to be reinstated on such full time list, he was duly appointed again and placed on our full time pioneer list on August 16, 1941. Our records further indicate that on April 16, 1942, he was promoted to special publisher pioneer. He was provided with ordination certificate showing that he was sent out by this Society some months ago and no doubt holds such certificate now, unless the same was filed with his questionnaire with the local board with which he registered.

Trusting that this is the information you required, we are,

Yours sincerely,

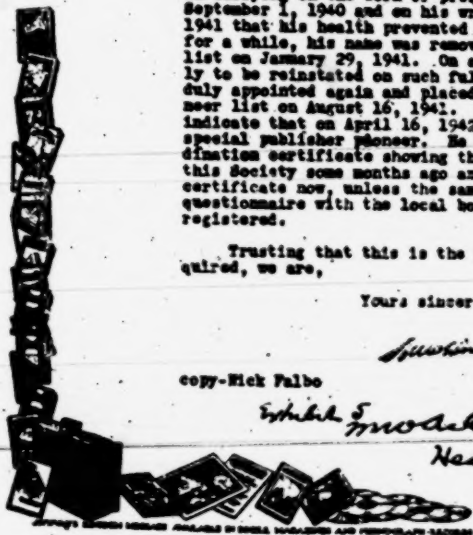
Spurgeon L. R. Jones, Sec.

copy-Wick Falbo

Exhibit 5 mod. 10/10/42

Hessing Nov.

I found I would add my report a day or so, if he would be supply a certificate from the Society of his being a member. This was done 5/2/42



Defendant's Exhibit "J", Affidavit of Appellant

Defts & J 14/1/42 A.T.

Affidavit of Nick Falbo

Page I

Before me the undersigned authority, on this day personally appeared Nick Falbo, who upon oath deposes and says:

I the undersigned, submit the following in support of my stand as a Minister of the Gospel and to prove to the court that I have not violated the Selective Service Laws.

On August 23, 1942 I received a notice from my local draft board that I was to report to a civilian public service camp. To such request I could not compromise because I have been improperly classified in class 4-E. The true and correct classification in which I should have been classified is 4-D because of my ministerial occupation. I have been denied such classification by the draft board. The board has stated that they took such action because my name did not appear in the certified list of pioneers.

The following is taken from the selective service regulations Vol. 3 paragraph 360 to show that the law does not require the name of a Minister to appear on a certified list in order for a Minister to be recognized as such by any local draft board:

CLASS IV-D: MINISTER OF RELIGION OR DIVINITY STUDENT.

- a. In Class IV-D shall be placed any registrant who is a regular or duly ordained minister of religion or who is a student preparing for the ministry in a theological or divinity school recognized as such for more than one year prior to the date of enactment of the Selective Training and Service Act (Sept. 16, 1940).
- b. A "regular minister of religion" is a man who customarily preaches and teaches the principles of a recognized church, religious sect, or religious organization of which he is a member, without having been formally ordained as a minister of religion; and who is recognized by such church, sect, or organization as a minister.

The Watchtower Bible and Tract Society of which I am a member identifies its special representatives known as pioneers by a letter of ordination which is issued to all pioneers.

I have been one of Jehovah's Witnesses for over ten years. On September 1st, 1940 I became a full time minister known as a pioneer and continued as such until the latter part of January 1941 when I became ill with influenza. Because of such illness I had my name temporarily removed from the list of pioneers registered with the Watchtower Bible and Tract Society. During my illness I was treated by two Doctors who supplied me with certificates showing the length of time of my illness. These two certificates were forwarded to the draft board. On August of 1941 I resumed my work as a pioneer. Because of my illness is the reason why my name was not listed on the list of pioneers which was issued by the said Society on July 9, 1941 and not because I wasn't recognized as a minister by the Society. My letter of ordination states the amount of time that I have been recognized a minister. My letter of ordination which I was supplied with has also been given to the board and because they have improperly classified me it shows that the letter of ordination and my other documents have not been properly considered.

Continued on page 2.

Defendant's Exhibit "J", Affidavit of Appellant

2

My ordination as a minister is given me by the Watchtower Bible and Tract Society and from Almighty God as set forth in the Bible at Isaiah 61:1,2 Isaiah 43:9-12 Matthew 10:7-12 Matthew 24:14 Acts 20:20 I Peter 2:21 I Corinthians 9:16.

Since I have made a covenant with Almighty God I must obey His commandments which are superior to mans laws as set forth in Acts 5:29 Acts 4:19 Acts 5:29.

The Bible states that the whole world lies under the evil one Satan the Devil therefore I have chosen to be a soldier of Jesus Christ as recorded in II Timothy 2,3 as follows: "Thou therefore endure hardness as a good soldier of Jesus Christ."

The words of Jesus stated at John 17:16 concerning his followers are; "They are not of the world even as I am not of the world."

My duties as a minister are as brought forth in I Peter 2:9 which reads as follows; "Ye are a chosen generation, a royal priesthood, holy nation, a peculiar people; that ye should shew forth the praises of him who hath called you out of darkness into the marvellous light."

Being that I am a footstep follower of Christ Jesus and a minister of Jehovah God, I cannot compromise with anything either law or man that will cause me to deviate from my contract with Jehovah God.

Since the draft board has failed to classify me according to Selective service regulations it is now the duty of this court to render a correct decision and receive the approval of Almighty God.

Mark F. Felt

Sworn to and subscribed to before me on this day of Sept. 9th 1962

JOSEPH VITTA, Notary Public

My Commission Expires

Joseph Vitta

Verdict of Jury

And now, to wit: December 1, 1942, we, the Jurors empaneled in the above-entitled case, find the Defendant Guilty.

(Signed) WILLIAM J. GRAHAM,
Foreman

Judgment and Commitment

On this 1st day of December, 1942, came the United States Attorney, and the defendant Nick Falbo appearing in proper person, and

by counsel and,

The defendant having been convicted on verdict of guilty of the offense charged in the indictment in the above-entitled cause, to wit:

Violation of Selective Training and Service Act of 1940 and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, IT IS BY THE COURT

ORDERED AND ADJUDGED that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of

five (5) years - no fine - no costs.

IT IS FURTHER ORDERED that

IT IS FURTHER ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) F. P. SCHOONMAKER,
United States District Judge

The Court recommends commitment to

A True Copy: Certified this 1st day of December,
1942.

(By) I. C. STAUER,
Deputy Clerk

(Signed) G. H. BERGER,
Clerk.

This Appendix for the Appellant is hereby respectfully submitted.

P. K. JONES,
235 Broad Bldg.,
New Kensington, Pa.

VICTOR F. SCHMIDT,
Pine Road,
Rossmoyne, Ohio.
Attorneys for Appellant.

[fol. 82] IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF PENNSYLVANIA

Of November Term, A. D. 1942.

Western District of Pennsylvania, ss:

The Grand Jurors of the United States of America, now inquiring in and for the Western District of Pennsylvania, after being duly impaneled, sworn and affirmed and charged at the term of said Court now pending, upon their oaths and solemn affirmations, respectively do present, that Nick Falbo hereinafter referred to as the defendant, late of said district, heretofore, to wit, on or about the fourth day of September, in the year of our Lord, one thousand nine hundred and forty-two, at West Newton, in the County of Westmoreland, in the Western District of Pennsylvania, and within the jurisdiction of this Court, having, in pursuance of the Selective Training and Service Act of 1940 become a registrant with Local Board No. 11, at West Newton, Westmoreland County, Pennsylvania, which said Local Board was fully appointed and acting for the area in which he, the said defendant, is a registrant, did unlawfully, knowingly, wilfully and feloniously fail and neglect to perform duties required of him under and in the execution of [fol. 83] the Selective Training and Service Act of 1940 and regulations passed pursuant thereto, that is to say, at the time and place aforesaid, said defendant, having been classified as a conscientious objector and having been placed in Class IV-E by Local Board No. 11, West Newton, Pennsylvania, pursuant to assignment to work of national importance as he, the said defendant, was ordered to do and as he was required by the provisions of the said Act and rules and regulations made pursuant thereto; contrary to the form of the Act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

Charles F. Uhl, United States Attorney.

[fol. 84] [Endorsed:] No. 11171 Crim. United States District Court, Western District of Pa., — Division. The United States of America vs. Nick Falbo. Indictment, Violation of Selective Training & Service Act of 1940. (1 count). A true bill, Wm. W. Reese, Foreman. Filed in open court this

12th day of November, A. D. 1942. G. H. Berger, Clerk.
Charles F. Uhl, U. S. Attorney.

Plea and Waiver of Counsel

The defendant, Nick Falbo, waives arraignment and pleads not guilty in open Court this Dec. 1, 1942 day of December, A. D. 1942.

Nick Falbo.

Defendant represented by Victor F. Schmidt, Atty.

[fol. 85] UNITED STATES DISTRICT COURT, WESTERN DISTRICT
OF PENNSYLVANIA, AT PITTSBURGH

Criminal Action

No. 11171

THE UNITED STATES OF AMERICA, Plaintiff,

VS.

NICK FALBO, Defendant

Notice of Appeal to Circuit Court of Appeals

Name and Address of Appellant: Nick Falbo, 327 Hill Street, Belle Vernon, Pennsylvania.

Name and Address of Appellant's Attorney: Victor F. Schmidt, Pine Road, Rossmyrne, Ohio.

Offense: Failure to report for service in work of national importance under the Selective Service System when ordered so to do by the Local Board.

Date of Judgment: December 1, 1942.

Brief description of Judgment or Sentence: Five year confinement in a federal penitentiary.

Name of Prison where now confined, if not on bail: Allegheny County Jail, Pittsburgh, Pennsylvania.

I, the above named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Third Cir-

ent from the judgment above mentioned on the grounds set forth below.

(Signed) Nick Falbo, Appellant.

Dated: December 2, 1942.

Grounds of Appeal:

1. The trial court erred overruling the plea in abatement of the defendant to which ruling the defendant made timely exception.

2. The trial court erred in overruling the motion to dis-[fol. 86] miss of the defendant at the close of the plaintiff's case to which ruling the defendant made timely exception.

3. The trial court erred in his instruction to the jury that if defendant wished to question his classification by the Local Board he should have reported for service under the Selective Service System and thereafter instituted habeas corpus proceedings when the Local Board was arbitrary, unfair and denied him a hearing.

4. The trial court erred in his instructions to the jury when he asserted that the Court had no jurisdiction to review the actions of the Local Board when such was prejudicial, arbitrary, and denied defendant a hearing for his claim as a minister of religion.

5. The trial court erred in refusing to admit in evidence those things said and done when defendant tried to present his case before the Local Board and was refused by said board.

6. The trial court erred in refusing the defendant's tendered instruction to the jury that if from a consideration of all the evidence the defendant was a regular and duly ordained minister of religion at all times when he was under the jurisdiction of the Selective Service System then the jury should return a verdict for the defendant.

7. The trial court erred in refusing the defendant's instruction to the jury that if from all the evidence they found that the local board was prejudicial, unfair, and arbitrary, then they should return a verdict for the defendant.

(Signed) Victor F. Schmidt, Attorney for Appellant.

(Signed) P. K. Jones, Associate Counsel for Appellant.

[Endorsed:] United States District Court, Western District of Penn'a at Pittsburgh. No. 11171. Criminal Action. The United States of America, Plaintiff vs. Nick Falbo, Defendant. Notice of Appeal to Circuit Court of Appeals, Victor E. Schmidt, P. K. Jones, Attys. for Defendant. Filed Dec. 4, 1942. (Signed) G. H. Berger, Clerk.

[fol. 87] UNITED STATES DISTRICT COURT, WESTERN DISTRICT
OF PENNSYLVANIA, AT PITTSBURGH

Criminal Action

No. 11171

THE UNITED STATES OF AMERICA, Appellee,

vs.

NICK FALBO, Appellant,

On appeal to United States Circuit Court of Appeals for
Third Circuit, No. 8233

ASSIGNMENT OF ERRORS

Now comes the defendant, by his attorney, and says that in the proceeding herein held in the United States District Court for the Western District of Pennsylvania at Pittsburgh and in the orders and judgments entered by said Court there are manifest errors; to wit:

Assignment of Error No. 1

The Court erred in denying the plea in abatement on behalf of the defendant before evidence was produced and to which ruling of the Court the defendant took timely exception. The said Plea in Abatement is in letters and figures set out as follows:

UNITED STATES DISTRICT COURT, WESTERN DISTRICT (THIRD
CIRCUIT), AT PITTSBURGH

Criminal Action

No. 11171

THE UNITED STATES OF AMERICA, Plaintiff,

VS.

NICK FALBO, Defendant

PLEA IN ABATEMENT

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Now comes Nick Falbo, the defendant in the above entitled course of action, and being duly sworn herewith presents his Plea in Abatement on facts extrinsic to the Indictment and record thus far in this case:

I. The defendant says that he has been a regular minister [fol. 88] of religion since 1931 and a "duly ordained minister" since Sept. 1, 1940 and this fact was made known to the Local Board at the time of filling out his questionnaire and also presented in his conscientious objector's affidavit. The Local Board, therefore, had no authorization to issue the order to report for work of national importance in a conscientious objectors' camp when Title 50 U. S. C. A. 305 (d) exempts from training and service (but not from registration) a regular or duly ordained minister of religion, which the defendant asserted himself to be at all times in the matters pertaining to this case.

II. The Court lacks jurisdiction by reason of the fact that the defendant had valid reasons for having failed to perform the duty required of him under the Selective Service System, to-wit:

(a) The Local Board in its administration failed to take necessary steps and violated Section 623.1 (c) of the Selective Service Regulations whereby the Defendant was wrongly classified and ordered to report,—and any judgment of this Court predicated upon such unwarranted jurisdiction and whereby the Defendant would be deprived of his

liberty is contrary to the First, Fifth, and Thirteenth Amendments to the United States Constitution.

(b) The jurisdictional basis of the present procedure as the evidence shows is predicated upon the acts and procedure of the Local Board which acted unfairly, arbitrarily and discriminatorily and capriciously in violation of the rights of and to the prejudice of the Defendant, contrary to Section 623.1 (c) of the Selective Service Regulations.

(c) The jurisdiction of this Court is based upon the procedure taken by the Local Board which has violated and omitted material steps prior to the order to report and contrary to the rules and regulations of the Selective Service System, and particularly Section 601.5 thereof.

The Defendant prays that the indictment be quashed.

The defendant reserves exception to any adverse ruling hereon.

(Signed) Nick Falbo.

[fol. 89] STATE OF PENNSYLVANIA,
County of Allegheny, ss:

The Defendant being duly sworn states that the above facts are true to his personal knowledge except those based upon information and belief and as to them he has reason to believe they are true.

(Signed) Nick Falbo.

Sworn and subscribed before me this 1st day of December, 1942.

(Signed) I. C. Stauer, U. S. Deputy Clerk.

AUTHORITIES:

Application of Greenberg, 39 Fed. Supp. 13.

St. Joseph Stock Yards Co., v. U. S., 298 U. S. 38, at 49 to 54.

Interstate Commerce Comm., v. Louisville & Nashville Ry. Co., 227 U. S. 88, 91.

U. S. A. vs. Raise (1942), U. S. Circuit Court of Appeals for the Sixth Circuit.

Ver Mehren v. Sermyer, Commandant, etc., 36 Fed. 2d 976.

Ex parte Green, 123 Fed. 2d 862.

U. S. v. Nevin, 199 Fed. 831.

U. S. v. Greene, 113 Fed. 683.

U. S. v. Hammond, 26 Fed. Cases, No. 15,294.

Now December 1, 1942 Plea overruled.

Per Curiam, F. P. Schoonmaker, Judge.

The proceedings of the Court at the time of the presentation of the Plea in Abatement were as follows, as taken from pages 2 and 3 of the Transcript of Testimony:

Mr. Schmidt: The defendant at this time will present a plea in abatement. (Written plea presented).

The Court: Have you seen this plea, Mr. Mashank?

Mr. Mashank: Yes, I have a copy of it, Your Honor. And I feel it ought to be dismissed, for the reason the facts set forth here are not properly raised. It is not a matter for this court to determine. There is a procedure provided for the remedy he is asking for, under that case in the Circuit [fol. 90] Court of Appeals.

The Court: Do you admit the facts set out in this plea in abatement?

Mr. Mashank: No, Your Honor, we do not admit the facts.

The Court: The only fact that I see is his assertion that he is a regular minister of religion.

Mr. Mashank: And that is the fact that we do not admit. We say that matter has already been passed upon by the proper tribunal.

The Court: It is our view that the subject matter raised in this plea of abatement is a matter that should be raised before the regularly established Draft Board, and that that Board has the decision of whether or not this man is to be listed as he claims he should be. We therefore deny this plea in abatement.

Mr. Schmidt: The defendant respectfully excepts to the ruling of the Court.

Assignment of Error No. 2

The Court erred denying the written motion to dismiss on behalf of the defendant at the close of the evidence for the government to which ruling of the court the defendant took timely exception. The said written motion to dismiss is in letters and figures set out as follows:

[fol. 91] UNITED STATES DISTRICT COURT, WESTERN DISTRICT
(THIRD CIRCUIT)

At Pittsburgh

Criminal Action No. 11171

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

NICK FALBO, Defendant

MOTION TO DISMISS

Comes now the defendant in the above entitled case and moves the Court for an instructed verdict to dismiss the defendant for the following reasons:

(1) The trial court does not have jurisdiction of the subject matter involved in this case because the order for induction by the local Board under the Selective Service System was irregular and without authority in the instant case since regular or duly ordained ministers are exempt from induction according to Title 50 U. S. C. A. 305 (D) and such action of said Local Board was unfair and arbitrary as disclosed upon the record,—all of which is contrary to the First, Fifth, and Thirteenth Amendments to the United States Constitution.

(2) The evidence is insufficient to constitute a crime under the laws of the United States, because the uncontradicted evidence shows that the defendant at all times since his registration under the Selective Service Act to the present time has been a regular and a duly ordained minister of religion and the Local Board was unfair, arbitrary and discriminatory in the administration of the law contrary to Section 623.1 (c) of the Selective Service Regulations.

(3) The defendant is protected from the charge named in the indictment by specific exemptions stated in the law under which he is held, namely: Title 50, U. S. C. A. 305 (d) exempts from training and service (but not from registration) regular or duly ordained minister of religion. Furthermore, the application of the Selective Service Act according to Section 601.5 of the Selective Service Regulations, protects the defendant from performing the duty

charged in the indictment because he had a valid reason for having failed to perform said duty under the regulations.

The defendant reserves exception to any adverse ruling hereon.

(Signed) Victor F. Schmidt, Attorney for Defendant.
Address: Pine Road, Rossmoyne, Ohio.

December 1, 1942. Motion denied.

Per Curiam.

F. P. Schoonmaker, Judge.

[fol. 92]

AUTHORITIES

St. Joseph Stock Yards Co., v. U. S., 298 U. S. 38, at 49 to 54.

Interstate Commerce Comm., v. Louisville and Nashville Ry. Co., 227 U. S. 88, 91.

U. S. A. v. Raise (1942), U. S. Circuit Court of Appeals for the Sixth District.

Application of Greenberg, 39 Federal Sup. 13.

Ver Mehren v. Sermyer, Commandant, etc., 36 Federal 2nd., 976.

Ex parte Green, 123 Fed. 2nd., 862.

U. S. v. Greene, 113 Fed. 683.

U. S. v. Nevin, 199 Fed. 831.

U. S. v. Hammond, 26 Fed. Cases, No. 15,294.

The proceedings in the Court at the time of the presentation of the written motion to dismiss were as follows:

Mr. Schmidt: At this time the defendant files a motion to dismiss the action. (Written motion submitted).

The Court: Motion denied.

Mr. Schmidt: To which ruling of the Court the defendant respectfully excepts.

Assignment of Error No. 3

The Court erred in refusing to admit in evidence defendant's exhibit "C" which was the registrant's Conscientious Objector's form and including signed statement of the defendant and his authorization certificate. While said Conscientious Objector's form did not specifically apply for classification of that of a Minister yet the attended statement thereto specifically requested,—“I, therefore,

wish that the Board will carefully consider my stand and ask for classification (4D) for complete exemption." The authorization certificate appended to the Conscientious Objector's form and made a part thereto and included as a part of exhibit "C" asserts that Nick Falbo whose signature appears below is an ordained Minister of Jehovah God [fol. 93] to preach the Gospel of God's Kingdom under Christ Jesus and is therefore one of Jehovah's witnesses. Said authorization certificate was issued by the Watchtower Bible & Tract Society, Inc. and signed by J. F. Rutherford, President. The Conscientious Objector's form, "My Statement" and the authorization certificate all being included in exhibit "C" and being quite lengthy, the same are set out in full by photostatic reproduction in the list of exhibits to be reviewed by this Court. The same are also set out in the appendix of the Brief.

The proceedings in the Court at the time that exhibit "C" was presented and offered in evidence are as follows taken from pages 21, 22, 23 and 24 of the Transcript of Testimony:

Q. Is this the conscientious objector's form that you filled out (handing Defendant's Exhibit "C" to witness)?

A. It is.

Q. Marked Defendant's Exhibit "C". Is the handwriting therein your handwriting?

A. It is.

Q. And attached thereto, is that statement signed by you?

A. It is.

Q. And also appended and attached thereto is your authorization card. Does that bear your signature, in your own writing?

A. It does.

Mr. Schmidt: We offer Defendant's Exhibit "C" in evidence.

Mr. Mashank: If the Court please, I haven't any objection to the admission of this, provided it is limited to the [fol. 94] fact that this man claimed to be a conscientious objector, and that claim was respected by the Board and he was placed in Class 4-E. I think it should be limited to that purpose only.

Mr. Schmidt: If the Court please, it would rather be an injustice to the defendant to limit the conscientious objector's form to anything else than what appears on the face

thereof. We offer this in evidence for what it is, which includes the statement and the authorization card therein.

Mr. Mashank: We say that statement and authorization card does not mean anything, because it is not authenticated. We don't know what it is. It is only a printed card, no proof as to who signed it or had any authority to sign it.

The Court: As I understand it, you have no objection to this paper as being a claim for the privileges extended to conscientious objectors?

Mr. Mashank: That is right, Your Honor. In other words, he is claiming that he is a conscientious objector. We agree with him, and we have placed him in that classification, and that is all that paper is good for.

The Court: Yes, I would think that is the total of its evidential value, for what it purports to be on its face. I do not understand they offer it for any other purpose.

Mr. Schmidt: If Your Honor please, on its face you will note on the front page there that the applicant has crossed out the portion of the conscientious objector's application which requests him to be placed in the classification as a [fol. 95] conscientious objector; but this brings to the attention of the Appeal Board that he is a minister.

The Court: He says, "I claim exemption provided by the Selective Training and Service Act of 1940 for conscientious objectors, because I am conscientiously opposed by reason of my religion, training and belief to the participation of war in any form and the participation in any service which may be under the direction of military authorities." I don't see any claim here that he presents that he is a minister of the gospel.

Mr. Mashank: Nothing in that document.

The Court: If it is offered for the purpose of showing that he is a minister of the gospel, it is clearly objectionable, because there is nothing in the paper that makes that claim.

Mr. Schmidt: We present it for the purpose, to let the instrument speak for what is on the face thereof. There is nothing—

The Court: If it is only for the limited purpose, the Government, as I understand it, makes no objection to your offering this for the purpose of showing that he is a conscientious objector.

Assignment of Error No. 4

The Court erred in refusing to admit in evidence defendant's Exhibit "D" when offered and an objection was made by the Assistant District Attorney and to which ruling of the Court the defendant took exception. Defendant's Exhibit "D" is a certificate of ordination issued by the Watchtower Bible & Tract Society, Inc. A photostatic copy of [fol. 96] this certificate is presented in the record as one of the very important Exhibits showing that the defendant-appellant has been a Minister since 1931. This Exhibit along with statement in his original questionnaire proves that he has been an ordained Minister since the year 1931. The proceedings that occurred in the Court at the time that the Defendant-appellant sought to introduce defendant's Exhibit "D" in evidence are as follows as taken from page 24 of the Transcript of Testimony:

Q. Furthermore, I will ask you: Can you explain to the Court and jury what this letter or affidavit marked Defendant's Exhibit "D" is?

Mr. Mashank: Wait just a minute. I believe he can identify an exhibit, but he cannot tell us what is in it.

Q. For the means of identification, what is Defendant's Exhibit "D"?

A. It is my certificate of ordination from the Watch Tower Bible and Tract Society, and issued to me as a minister.

Mr. Schmidt: The defendant offers this in as evidence.

Mr. Mashank: If the Court please, this is objected to, for the reason it has no bearing on any issue in this case. The facts set forth there have already been passed upon by the Board of Appeals and the Local Board, something that this Court cannot disturb.

The Court: We sustain the objection.

Mr. Schmidt: To which an exception is taken.

[fol. 97] Assignment of Error No. 5

The Court erred in refusing to admit in evidence defendant's Exhibit "I" which was a special letter sent by the Watchtower Bible & Tract Society, Inc., to Mr. M. W. Acheson, Hearing Officer, and which states that the Appellant herein is an ordained Minister of the Gospel. The photostatic copy of said Exhibit "I" is found on page 29 of the

Exhibits for the Defendant-Appellant. The proceedings in Court at the time when said Exhibit "I" was sought to be introduced are as follows:

Q. For the purposes of identification, will you kindly relate what Defendant's Exhibit "I" is?

A. That was a special letter sent by the Watch Tower Bible and Tract Society to Mr. M. W. Acheson, Hearing Officer, United States Attorney.

Mr. Schmidt: I present this as evidence in the case.

Mr. Mashank: I object to this, for the reason there is nothing in there to prove or disprove any issue in this case; and for the further reason that relates to questions already passed upon by the Board of Appeals and Local Board, and something that this Court cannot disturb.

The Court: We sustain the objection.

Q. Can you, in substance, briefly state what Defendant's Exhibit "H" is?—

Mr. Schmidt: Before entering that, the defendant reserves an exception to the ruling of the Court on the letter addressed by the Watch Tower Bible and Tract Society to Mr. Acheson.

Assignment of Error No. 6

The Court erred in refusing to admit in evidence defendant's Exhibits "E", "F", "G", and "H" which are set forth by photostatic copies in Appellant's Exhibit on pages 24, 25, 26, 27 and 28. The Court proceedings at the time of the presentation of these Exhibits for evidence is as follows:

Q. Will you now briefly state what are Defendant's Exhibits "E", "F", "G" and "H"?

A. These are affidavits which have been duly sworn to by members of Jehovah's Witnesses and other members that are not Jehovah's Witnesses but other religious sects, that they have recognized me as one of Jehovah's Witnesses and as a Pioneer Minister for the Watch Tower Bible and Tract Society.

Mr. Schmidt: And the defendant offers these as evidence.

Mr. Mashank: These are objected to, for the reason they are not the best evidence.

The Court: We sustain the objection.

Mr. Schmidt: To which an exception is respectfully taken.

Assignment of Error No. 7

The Court erred in refusing to admit in evidence Defendant's Exhibit "B" which is an explanation to the Local Board of the reason why the defendant did not report for service and which is set out in the record by means of photostatic copy on page 14 of Appellant's Exhibits. The Court proceedings at the time that the Exhibit No. 7 was offered in evidence are found on pages 26 and 27 and are as follows:

Q. Could you briefly state what Defendant's Exhibit "B" is?

A. It is an explanation to the Board—

Mr. Mashank: Just a minute. Don't tell us the contents [fol. 99] of that paper; just identify it.

A. (Continuing) 'It is a statement which I wrote to my Local Board, which I signed, concerning their letter of delinquency.

Mr. Schmidt: We offer this as evidence.

Mr. Mashank: We object to this, for the reason it is of no evidential value and it refers to matters that have already been passed upon by the hearing officer, the Board of Appeals and the Local Board, and something which this Court cannot pass upon.

The Court: We sustain the objection.

Mr. Schmidt: To which the defendant respectfully excepts.

Assignment of Error No. 8

The Court erred in refusing to admit in evidence defendant's Exhibit "J" which is the statement of the Defendant-Appellant made to the Agent of the Federal Bureau of Investigation. A photostatic copy of Defendant's Exhibit "J" is found on pages 30 and 31 of the Appellant's Exhibits. The Court proceedings at the time that the Exhibit "J" was offered is found on page 27 and 28 as follows:

Q. For the purpose of identification, what is Defendant's Exhibit "J"? Mr. Falbo?

A. This is my statement which I handed to the F. B. I. agent, which I spoke to here one time in this building in reference to my work.

Q. And is that signed—does that paper bear your signature?

A. It has my signature; and I also had this notarized.

Mr. Schmidt: Defendant offers this as evidence in this case.

[fol. 100] Mr. Mashank: This is objected to, for the reason it is a self-serving declaration, also contains conclusions, and also refers to matters that have already been passed upon by the Board of Appeals, the Hearing Officer and also the Local Board, and also a matter which cannot be disturbed by this Court.

The Court: We sustain the objection.

Assignment of Error No. 9

The Court erred in sustaining the objection to the following questions as found on page 28 of the record:

Q. Now, Mr. Falbo, when you made application for a hearing at your Local Board, did you go down there?

A. I did.

Q. And for the purpose of the record, would you mind relating just what took place?

After the objection was sustained by the Court the Defendant took exception and made an offer which is set out in full below.

The proceedings of the Court at the time of this presentation are found on pages 28 and 29 of the record and are as follows:

Q. Now, Mr. Falbo, when you made application for a hearing at your Local Board, did you go down there?

A. I did.

Q. And for the purpose of the record, would you mind relating just what took place?

Mr. Mashank: This is objected to, as being immaterial in this issue.

The Court: We sustain the objection.

[fol. 101] Mr. Schmidt: To which an exception is kindly taken. For the purposes of the record, in order that the reviewing court might determine, the witness will make the following proffer—

Mr. Mashank: You mean an offer?

Mr. Schmidt: Yes. (At side bar): When the defendant went down to the Board to have his hearing the Local Board

under which he was registered—four members were present, and when he announced that he was one of Jehovah's Witnesses one of the Board members, who is a minister, or purports to be, said "I do not have any damned use for Jehovah's Witnesses". He attempted to produce evidence by affidavits from the Watch Tower Bible and Tract Society and from his work that he had done, as well as the scriptural authority from the Bible, and the Board stated, "We have no time to listen to this", and he was dismissed.

Mr. Mashank: Objected to, as being immaterial and irrelevant.

The Court: We sustain the objection.

Mr. Schmidt: To which ruling the defendant respectfully excepts.

Assignment of Error No. 10

The Court erred specifically in his charge to the Jury in the following words taken from pages 38 and 39 of the record:

"Now, that classification by the Local Draft Board is binding upon this court and upon the jury. We cannot say whether the Board correctly classified this man. If he has any legal objection to the classification in which he is placed he could have that matter further determined by the court, by reporting to the Local Draft Board for classification, as required by the statute, and then presenting a [fol. 102] petition for a writ of habeas corpus to release him from that assignment; and, if that were true, then the Court, or the judge, would have to pass upon that question and determine whether or not he was properly classified as a conscientious objector instead of a minister of the gospel, as he claims to be. With that in this particular trial we have nothing to do. The Court and the jury must accept as a fact that he was classified in Class 4-E, as a conscientious objector. And then, if you find from the facts that he failed to report—and there is no evidence to the contrary, and even he himself admits it on the witness stand, that he did not report—it would be your duty to find him guilty."

The proceedings of the Court immediately following this statement of the Court are set forth in the record as follows:

Court: Have counsel on either side request for further or additional charges on any point?

Mr. Mashank: No, Your Honor.

The Court (continuing): Your verdict will be returned in written form, and on that form you will say whether you find the defendant guilty or not guilty.

Mr. Schmidt (at side bar): The defendant respectfully objects to that portion of the charge made by the Court in substance that if the defendant wanted to test the classification he should have reported and tested the classification by means of habeas corpus proceedings.

The second objection that the defendant takes to the charge is that the classification made by the Local Board or the Board of Appeals, whichever it might have been, is binding upon this court, the defendant holding that such would be the case where there is no prejudice and where a full and fair hearing is accorded to the defendant, but in this case such did not obtain.

[fol. 103] Assignment of Error No. 11

The Court erred in refusing the specific charges offered by the defendant for the consideration of the Jury and which are set out in the Transcript of Testimony on page 40 as follows:

The defendant offers the following specific charges to the jury: "If from all the facts in the case you find that the Local Board was prejudicial, unfair, arbitrary and capricious toward the defendant in its classification and its refusal to grant him a hearing, then you will return a verdict for the defendant.

"Second: If from all of the facts in the case you find that the defendant at all times during the course that he was under the jurisdiction of the Selective Service System has been a regular and or duly ordained minister of religion, and that the Local Board and Board of Appeals had knowledge of this from the evidence presented, then you will return a verdict for the defendant."

The Court: We decline to make the requested charges.

Mr. Schmidt: To which ruling of the Court the defendant respectfully excepts.

And by reason of said errors and other manifest errors appearing in the record herein the defendant prays that

the judgment of conviction be set aside and that he be discharged from custody.

Dated March 2, 1943.

Victor F. Schmidt, Attorney for Defendant-Appellant.

No. 11171, United States District Court, Western District of Pennsylvania. United States v. Nick Falbo. Assignments of Error.

[fol. 104] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1942.

No. 8233.

UNITED STATES OF AMERICA

vs.

NICK FALBO, Appellant.

And afterwards, to wit, the 5th day of April, 1943, come the parties aforesaid by their counsel aforesaid, and this case being called for argument *sur* pleadings and briefs, before the Honorable John Biggs, Jr., Honorable Charles Alvin Jones and Honorable Herbert F. Goodrich, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the 6th day of May, 1943, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

[fol. 105] IN THE UNITED STATES CIRCUIT COURT OF AP-
PEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1942.

No. 8233.

UNITED STATES OF AMERICA

vs.

NICK FALBO, Appellant.

Appeal from the District Court of the United States
for the Western District of Pennsylvania

OPINION—Filed May 6, 1943

Before Biggs, Jones and Goodrich, Circuit Judges

Per CURIAM:

The judgment is affirmed upon the authority of United
States v. Grieme, 128 F. (2nd) 811.

A true Copy:

Teste:

— — —, Clerk of the United States Circuit Court
of Appeals for the Third Circuit.

[fol. 106] IN THE UNITED STATES CIRCUIT COURT OF AP-
PEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1942.

No. 8233

UNITED STATES OF AMERICA

vs.

NICK FALBO, Appellant.

Present: Biggs, Jones and Goodrich, Circuit Judges.

On appeal from the District Court of the United States,
for the Western District of Pennsylvania.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Western District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed.

By the Court.

John Biggs, Jr., Circuit Judge.

May 6, 1943.

Endorsements—Order Affirming Judgment. Received & Filed May 6, 1943.

Wm. P. Rowland, Clerk:

[fol. 107] UNITED STATES OF AMERICA
Eastern District of Pennsylvania,
Third Judicial Circuit, Set:

I, Wm. P. Rowland, Clerk of the United States Circuit Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original Appendix to Brief for Appellant, as constituting the portions of the record before this court at argument; and proceedings in this court in the case of United States of America vs. Nick Falbo, appellant, No. 8233, on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 24th day of May in the year of our Lord one thousand nine hundred and forty-three, and of the Independence of the United States the one hundred and sixty-seventh.

Wm. P. Rowland, Clerk of the U. S. Circuit Court of Appeals, Third Circuit. (Seal.)

[fol. 108] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1942.

No. —

NICK FALBO, Petitioner,

vs.

UNITED STATES OF AMERICA

Subject to the approval of this Court, it is hereby stipulated and agreed by and between the attorneys for the respective parties hereto, that, for the purpose of the petition for a writ of certiorari, the printed record may consist of the following:

1. The appendix to the brief of the petitioner filed in the United States Circuit Court of Appeals for the Third Circuit.

2. The notice of appeal to the United States Circuit Court of Appeals as filed in the District Court on December 2, 1942, the indictment, assignment of errors and the proceedings of the United States Circuit Court of Appeals for the Third Circuit.

It is further stipulated and agreed that the petitioner will cause the Clerk of the United States Circuit Court of Appeals for the Third Circuit to certify and file the entire transcript of the record now on file in his office with the Clerk of this Court, and that in the event the petition for a writ of certiorari is granted the record shall consist of the appendix for the appellant's brief as filed in the United States Circuit Court of Appeals for the Third Circuit (without further printing thereof), and indictment, notice of appeal, assignment of errors and the proceedings of the United States Circuit Court of Appeals for the Third Circuit (the latter four items to be printed to supplement said appendix for petitioner).

It is further stipulated and agreed that either party may refer in the petition and briefs to any portions of the certified typewritten transcript of record which are not in-

[fol. 109] eluded in the printed record to be filed in accordance with this Stipulation.

Charles Fahy (A. Q.), Solicitor General of the United States, Counsel for Respondent.. Victor F. Schmidt, Counsel for Petitioner.

Dated this 24th day of May, 1943.

[fol. 110] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 21, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(7548)